REMARKS

Applicant notes the obviousness-type double patenting rejection has been withdrawn.

Applicant notes the withdrawal of §112 rejection regarding claims 15, 16 and 19.

Claims 11-13, 20 and 22 stand rejected under §112. Applicant respectfully traverses this rejection.

Applicant directs the attention of the Examiner to Figure 4 and to the corresponding subject matter occurring at page 11, line 28 – page 12, line 2. Additionally, Applicant provides the Examiner with a definition of "full width at half maximum" from the McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Edition. Applicant apologizes and did not realize that the Examiner was not familiar with this well known phraseology. Applicant is referencing in Figure 4 and the language at pages 11-12 of the specification, the well known "full width at half maximum". Specifically, it is well known in the art that a way to determine the range of frequencies around a resonant frequency is to measure one-half the vertical amplitude of a wave and then horizontally determine what frequencies (i.e., frequency range) are encompassed at one-half the full amplitude (i.e., thus the term "full width at half maximum"). Accordingly, Applicant respectfully submits that the terminology used in each of claims 11-13, 20 and 22 is distinct and thus requests withdrawal of the §112 rejection.

Claim Rejections under §102/103

Claims 1-5, 7-9, 11-14, 17, 18 and 20-22 stand rejected under §102(b) as anticipated by Samulon et al. (US Patent 3,076,861). This rejection is respectfully traversed.

Contrary to the assertion that all elements of the claims are disclosed in the Samulon reference, certain elements are not.

In this regard, with regard to claim 1, Samulon is silent regarding:

> "...whereby said at least one means ***restricts*** approximately only destructively interfering frequencies of light ***within the photoreactive portion of the solar spectrum***, which do not correspond to: (1) said at least one primary frequency, (2) said at least one harmonic frequency and (3) said at least one heterodyne frequency from becoming incident upon the solar cell photovoltaic substrate." [Emphasis added.]

Moreover, with regard to claim 14, Samulon is silent regarding the claimed language:

> "...***determining*** at least one set of destructively interfering energies ***occurring within at least a portion of the photoreactive portion*** of the solar spectrum..." [Emphasis added.]

Clearly the §102 rejection of the pending claims over Samulon is unsupported by the art and should be withdrawn. MPEP §2131 provides:

> "'A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... "The identical invention must be shown in as complete detail as contained in the ...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.'

With regard to the §103 rejections over Samulon, Applicant notes the arguments of the Examiner. Specifically, with regard to the statements in Paragraph 11, Applicant provides the following comments. The Action characterizes Samulon inappropriately. Samulon does not have a structure capable of performing that which is recited in claim 1. The Action inexplicably refers to Figure 3 of Samulon and concludes:

> "...the filter element of Samulon...removes wavelengths of solar energy within Applicant's defined photoreactive portion between 300 and 1400nm." [Emphasis added.]

This characterization of Samulon is incorrect. Namely, Figure 3 shows **all wavelengths** being transmitted through the filter. Figure 3 shows that no wavelength has been restricted, as claimed by Applicant. Accordingly, the Action is flawed because it does not provide a precise, prima facie case of obviousness, which is the burden of the Examiner.

In contrast to the assertions in the Action, Samulon is silent and also does not suggest, by any language anywhere therein that certain wavelengths (frequencies) of light within the photoreactive portion of the solar spectrum can be detrimental and should be **restricted**. This is a conclusion reached in the Action based on hindsight alone. The black letter law from *In re Kotzab*, 217 F.3d 1365, 55 USPQ2d 1313 (Fed. Cir. 2000) states:

> "A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of the ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. ... Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of hindsight syndrome wherein that which only the invention taught is used against its teacher."

Samulon invites all wavelengths (frequencies) of light within the photoreactive portion to be incident upon his device. This is what the prior art teaches. This understanding is contrary to what is claimed in claim 1.

Moreover, with regard to method claim 14, Samulon has no determination of "destructively interfering energies occurring within at least a portion of the photoreactive portion of the solar spectrum". Samulon is ***completely silent*** regarding restricting any frequencies whatsoever of light ***within the photoreactive portion***. Moreover, since Samulon is completely silent and does not recognize the claimed advantages of restricting portions of sunlight within the photoreactive portion Samulon is also deficient as a §103 reference.

Applicant notes that a Notice of Appeal and a Request for Pre-Appeal Review has been submitted herewith.

Due to the clear deficiencies in the Action, Applicant respectfully requests a Notice of Allowance directed to claims 1-5, 7-9 and 11-22.

Should the Examiner deem that any further Action by Applicant would be desirable to put the application in better condition for Allowance, the Examiner is invited to telephone Applicant's undersigned representative.

Respectfully submitted,

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